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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,596	02/19/2002	Ronald W. Mink	030793-036100	2706
22204	7590	03/11/2005	EXAMINER	
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			NGUYEN, BAO THUY L	
		ART UNIT	PAPER NUMBER	
			1641	

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/076,596	MINK ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Bao-Thuy L. Nguyen	1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 February 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)          |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

*Election/Restrictions*

1. The Election/Restriction dated 9/27/2004 is hereby withdrawn in light of the fact that claims 2-52 have been canceled in a paper dated 2/19/2002. Applicant's comments on 1/17/2005 are appreciated.
2. Claim 1 is pending.

*Information Disclosure Statement*

3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

*Specification*

4. The specification contains numerous typographical errors, specifically, page 4, line 13, "less than" is repeated twice; lines 16-19, "60:m" is confusing, is the colon (:) meant to be micron ( $\mu$ )?; line 29; and page 12, line 6; page 14, line 12. Correction is required.
5. The use of the trademark, Nylon 6, has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US 4,635,488.

Kremer discloses a sampling device comprising a hollow tube having at least one open end, and a collecting nib secured in the open end of the tube and having an inner extremity facing the interior of the tube and an outer tip projecting beyond the last mentioned end of the tube for contact with a fluid to be collected. The nib comprises a solid, nonfibrous, porous, water-wettable body having porosity sufficient for absorption therein of the fluid to be collected. The nib is a unitary molded plastic body made of polyethylene or polypropylene and is treated with a wetting agent to impart water-wettability. Column 2, line 48 through column 3, line 9. The device of Kremer is also provided with a cap for closing the open end of the tube and with an elongated, absorbent and rigid analysis element having an agent that undergoes an observable change upon contact with a substance to be detected in a body fluid sample. The analysis element also has a proximal end mounted in the cap, such that when the cap is in position closing the open end of the tube, the analysis element extends through the tube and its distal end is in fluid transferring contact with the inner extremity of the nib to receive and absorb fluid collected by the nib. The distal end of the analysis element may be anchored in the nib, or may comprise a body of porous material arranged for contact with the inner extremity of the nib so that transfer of the sample from the nib to the analysis element by absorption occurs

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only after collection of the sample by the nib has been completed. Column 3, lines 26-50. In one embodiment, the device having an analysis element, either in particulate form or strip form, also comprises an absorbent but hydrophobic body situated between the nib and the analysis element to prevent premature transfer of samples to the analysis element. Column 3, lines 59-65, column 10, lines 53-68, and figure 16. Kremer discloses that the nib absorbs and retains a fluid sample by wicking or capillary action and should be contacted with, for example, the tongue until the nib is completely saturated with the body fluid; since a given porous nib has an essentially fixed fluid capacity, saturation assures collection of a sample of predetermined volume. Column 7, lines 7-23. Kremer discloses that porous nibs may be purchase from Porex Technologies. Column 5, lines 25-28. The device also comprises a transparent sidewall for visual observation of the color change. Column 8, lines 61-66.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5,334,502

US 5,611,995

US 5,714,341

US 5,830,410

US 6,248,598

9. No claim is allowed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bao-Thuy L. Nguyen whose telephone number is (571) 272-0824. The examiner can normally be reached on Tuesday and Thursday from 8:00 a.m. -3:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bao-Thuy L. Nguyen  
Primary Examiner  
Art Unit 1641  
